**Chava's Construction, Inc. *and* Chicago Northeast Illinois District Council of Carpenters.** Case 13–CA–32998

June 16, 1995

## DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

Upon a charge, first amended charge, and second amended charge filed by the Union on November 15 and December 22 and 28, 1994, respectively, the General Counsel of the National Labor Relations Board issued a complaint on March 20, 1995, against Chava's Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, first amended charge, second amended charge, and complaint, the Respondent failed to file an answer.

On May 22, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On May 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 25, 1995, notified the Respondent that unless an answer were received by May 5, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Chicago, Illinois, has been engaged as a drywall and taping contractor performing commercial construction work. During the calendar year ending December 31, 1994, the Respondent provided services valued in excess of $50,000 to employers who themselves are directly engaged in interstate commerce such as the Levy Company. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

About August 28, 1994, the Respondent created the impression among its employees that their union activities were under surveillance by the Respondent and threatened to lay off and refuse to recall or rehire its employees because of their protected concerted union activities.

About August 28, 1994, the Respondent laid off and/or discharged employee Martin Lopez and has since failed and refused to recall or rehire him because he assisted the Union and engaged in protected concerted activities, and to discourage employees from engaging in these activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent performing carpentry work in the jobs described in Article I, Section 1.1 of the collective-bargaining agreement.

Since about December 9, 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition was embodied in a recognition agreement dated December 9, 1991, and in successive collective-bargaining agreements, the most recent of which was effective by its terms from January 1, 1990, to May 31, 1995. At all times since December 9, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Commencing about January 1992 and at all material times, the Respondent has failed and refused to continue in effect all the terms and conditions of the collective-bargaining agreement by concealing from the Union the number and names of unit employees and not reporting the actual number of hours worked by

unit employees; failing to pay unit employees the wages required by that agreement; and failing to remit contributions to the Union's health and welfare fund, pension fund, and training fund as required by the terms of the collective-bargaining agreement. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

## CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By laying off or discharging Martin Lopez and since failing and refusing to recall or rehire him, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

3. By failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by laying off or discharging Martin Lopez and failing and refusing to recall or rehire him, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges and to notify the discriminatee in writing that this has been done.

In addition, having found that the Respondent has, since about January 1992, without the consent of the Union, failed to continue in effect all the terms and conditions of the collective-bargaining agreement, effective by its terms from January 1, 1990, to May 31, 1995, by unilaterally, since about January 1992, failing to pay unit employees the contractually required wages, and failing to make contractually required contributions to the Union's health and welfare fund, pension fund, and training fund, we shall order the Respondent to honor those terms and conditions until a new agreement or good-faith impasse is reached, and make whole the unit employees for any loss of earnings and benefits resulting from its failure to do so. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing to pay unit employees the contractually required wages since about January 1992, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra. In addition, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing, since about January 1992, to make contractually required contributions to the Union's health and welfare fund, pension fund, and training fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

## ORDER

The National Labor Relations Board orders that the Respondent, Chava's Construction, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression among its employees that their union activities are under surveillance.

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(b) Threatening to lay off or refuse to recall or rehire its employees because of their protected concerted union activities.

(c) Laying off and/or discharging employees or failing or refusing to recall or rehire them because they assisted the Chicago Northeast Illinois District Council of Carpenters or engaged in protected concerted activities or to discourage employees from engaging in these activities.

(d) Failing or refusing, without the Union's consent, to continue in effect all the terms and conditions of the collective-bargaining agreement, the most recent of which is effective by its terms from January 1, 1990, to May 31, 1995, by concealing from the Union the number and names of unit employees and not reporting the actual number of hours worked by unit employees; by failing to pay unit employees the contractually required wages; and failing to remit the contractually required contributions to the Union's health and welfare fund, pension fund, and training fund. The unit includes the following employees:

> All employees of the Respondent performing carpentry work in the jobs described in Article I, Section 1.1 of the collective-bargaining agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Martin Lopez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, as set forth in the remedy section of this decision.

(b) Remove from its files any and all references to the unlawful discharge or layoff of Martin Lopez, and notify him in writing that this has been done and that the discharge or layoff will not be used against him in any way.

(c) Honor all the terms and conditions of the January 1, 1990, to May 31, 1995 collective-bargaining agreement, until a new agreement or good-faith impasse is reached, including providing the Union the number and names of unit employees and the actual number of hours worked, and make the unit employees whole, with interest, for any loss of earnings or benefits and expenses attributable to its failure to do so since January 1992, and make all contractually required fund contributions that have not been made since January 1992, as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 16, 1995

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| Margaret A. Browning, | Member |
| Charles I. Cohen, | Member |
| John C. Truesdale, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT create the impression among our employees that their union activities are under surveillance.

WE WILL NOT threaten to lay off or refuse to recall or rehire our employees because of their protected concerted union activities.

WE WILL NOT lay off and/or discharge employees or fail or refuse to recall or rehire them because they assisted the Chicago Northeast Illinois District Council of Carpenters or engaged in protected concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the collective-bargaining agreement, the most recent of which is effective by its terms from January 1, 1990, to May 31, 1995, by concealing from the Union the number and names of unit employees and not reporting the actual number of hours worked by unit employees; by failing to pay unit employees the contractually required wages; and by failing to remit the contractually required contributions to the Union's health and welfare fund, pension fund, and training fund. The unit includes the following employees:

> All employees of the Employer performing carpentry work in the jobs described in Article I, Section 1.1 of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Martin Lopez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, with interest.

WE WILL notify Martin Lopez that we have removed from our files any reference to his discharge or layoff and that the discharge or layoff will not be used against him in any way.

WE WILL honor all the terms and conditions of the January 1, 1990, to May 31, 1995 collective-bargaining agreement, until a new agreement or good-faith impasse is reached, including providing the Union the number and names of unit employees and the actual number of hours worked, and make the unit employees whole, with interest, for any loss of earnings or benefits and expenses attributable to our failure to do so and make all contractually required fund contributions that have not been made since January 1992, as set forth in the decision of the National Labor Relations Board.

CHAVA'S CONSTRUCTION, INC.